Pennsylvania as well as my colleague from Illinois, and my home State colleague, Senator LIEBERMAN, and Senator MCCAIN, who have joined as cosponsors. I think we have made a good case for it, the bright line to get rid of the tripwires. That is a word you will hear me use quite frequently during the course of this discussion. We need clear, bright lines. We are not trying to complicate or make life difficult for people, but we are trying to make sure we have some very clear understandings as to what is permissible or not permissible in the conduct of our official business. So I thank my colleagues for their support.

Mr. LOTT. Mr. President, I ask unanimous consent that before we move to the amendment at hand, Senator FEINGOLD have his amendment in order following the Santorum-McCain amendment, and we will put it in the queue at that point. If it turns out not to be, we will work with the Senator at a later time.

Mr. FEINGOLD. Mr. President, reserving the right to object, and I will not object, let me say I appreciate the work of the Senators on this. Clearly what Senator DODD did is an improvement. I, however, believe we need to do more. I don't see this as a question of tripwires. What I see this as is a question of whether certain often well-to-do individuals who work for companies, who are not themselves registered lobbyists, be able to take Members of Congress out to lunch without the Member paying his own way for dinner, and I want to offer an amendment on that. But I want to acknowledge that Senator DODD has achieved a significant step in the right direction.

I will offer my approach to this a bit later.

Mr. LOTT. Mr. President, if I could modify my request, since I understand we had not gotten an agreement formally locked in. But after we dispose of the Dodd-Santorum amendment and the Wyden-Grassley amendment, the next amendment to be in order is the Santorum-McCain amendment, to be followed by the Feingold amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2942, AS MODIFIED

The PRESIDING OFFICER. The question is on agreeing to the Dodd amendment No. 2942, as modified.

The amendment (No. 2942), as modified, was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in recess until 2:15 p.m. today so that the parties can have their respective conference meetings.

There being no objection, the Senate, at 1:12 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SUNUNU).

LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2006—Continued

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I believe the Senate did clear the Dodd-Santorum amendment, so the pending issue is the Wyden-Grassley-Inhofe amendment.

The PRESIDING OFFICER. The amendment has not been submitted so it is not currently the pending question.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi has the floor.

Mr. LOTT. Mr. President, I believe, then, we would be ready to go with this amendment.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

AMENDMENT NO. 2944

Mr. WYDEN. Mr. President, I propose the Wyden-Grassley-Inhofe amendment, No. 2944, which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself and Mr. GRASSLEY, proposes an amendment numbered 2944.

Mr. WYDEN. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To establish as a standing order of the Senate a requirement that a Senator publicly disclose a notice of intent to object to proceeding to any measure or matter)

At the end of title I, add the following:

SEC. ___. REQUIREMENT OF NOTICE OF INTENT TO PROCEED.

(a) IN GENERAL.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent of a Senator who is a member of their caucus to object to proceeding to a measure or matter only if the Senator—

(1) submits the notice of intent in writing to the appropriate leader or their designee; and

(2) within 3 session days after the submission under paragraph (1), submits for inclusion in the Congressional Record and in the applicable calendar section described in subsection (b) the following notice:

''I, Senator ____, intend to object to proceeding to ____, dated ____.''.

(b) CALENDAR.—The Secretary of the Senate shall establish for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled ''Notices of Intent to Object to Proceeding''. Each section shall include the name of each Senator filing a notice under subsection (a)(2), the measure or matter covered by the calendar that the Senator objects to, and the date the objection was filed.

(c) REMOVAL.—A Senator may have an item with respect to the Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator ____, do not object to proceeding to ____, dated ____.''.

Mr. WYDEN. Mr. President, if you walked down the Main Streets of this country and asked people what a hold was in the U.S. Senate, I think it is fair to say nobody would have any idea what it is you were talking about. In fact, they might hear the world ''hold,'' and they would think it was part of the wrestling championships that are going on across this country right now. But the reason I am on the floor of the Senate today with my distinguished colleague, Senator GRASSLEY, and Senator INHOFE, is that the hold in the Senate, which is the ability to object to a bill or nomination coming before the Senate, is an extraordinary power that a United States Senator has, and a power that can be exercised in secret.

At the end of a congressional session, legislation involving vast sums of money or the very freedoms on which our country relies can die just because of a secret hold in the Senate. At any point in the legislative process, an objection can delay or derail an issue to the point where it can't be effectively considered.

What is particularly unjust about all of this is that it prevents a Senator from being held accountable. I think Members would be incredulous to learn this afternoon that the Intelligence reauthorization bill, a piece of legislation which is vital to our national security, has now been held up for months as a result of a secret hold.

I am going to talk a little bit about the consequences of holding up an Intelligence authorization bill in a moment. But I want to first be clear on what the Wyden-Grassley-Inhofe amendment would do. It would force the Senate to do its business in public, and it would bring the secret holds out of the shadows of the Senate and into the sunshine. Our bipartisan amendment would make a permanent change to the procedures of the Senate to require openness and accountability. We want to emphasize that we are not going to bar Senators from exercising their power to put a hold on a bill or nomination. All we are saying is, a Senator who wants that right should also have a responsibility to the people he or she represents and to the country at large.

Now, to the hold on the Intelligence bill that has been in place for more than 3 months, I think every Member of the Senate would agree that authorizing the intelligence programs of this country is a critical priority for America. Striking the balance between fighting terrorism ferociously and protecting our civil liberties is one of the most important functions of this Senate. The bill that is now being held up as a result of a secret hold, the Intelligence reauthorization bill, has been

reviewed by a number of Senate committees. It was reported by the Intelligence Committee late last September, by the Armed Services Committee last October, and by the Homeland and Governmental Affairs Committee last November.

I particularly commend Chairman ROBERTS who worked with me on a number of amendments, amendments that I felt strongly about, because this legislation does ensure that there will be accountability and oversight in the Intelligence Committee by establishing a strong inspector general, by requiring that the committees get the documents they need to perform effective oversight over the intelligence community, and by making the heads of the key agencies subject to Senate confirmation.

I think the Senate would particularly want to know if this legislation, the Intelligence reauthorization bill that is held up by a secret hold, does not move forward, it will be the first time since the Senate Select Committee on Intelligence was established in 1978 that the Senate has failed to act on an Intelligence reauthorization bill.

What we have is a situation where a single, anonymous Senator has invoked a practice that cannot be found anywhere in the Senate rules and has lodged an objection to a piece of legislation that is critically important to the well-being of America. Senators have often asked Senator GRASSLEY and myself and Senator INHOFE: Where are the examples of these secret holds? Exactly why do you believe your legislation is important? We now have a textbook case of a secret hold that is injurious to America.

For all the talk about earmarks—we have been discussing that here on the Senate floor, as well as the scope of conference, line-item vetoes and the like—I would wager that no weapon is more important and more powerful to each Senator than the ability to stop amendments, legislation, and nominations through secret holds. I believe as U.S. Senators we occupy a position of public trust and that the exercise of the power that has been vested in each of us should be accompanied by public accountability.

I have no quarrel with the use of a hold. I have used them myself on several occasions. But what is offensive to the democratic process is the anonymity, the secrecy, the lack of accountability when a Senator tries to exercise this extraordinary power in secret.

Let me just wrap up, because I see the distinguished chairman of the Finance Committee is here, with a quick minute on the history of these efforts. Senator GRASSLEY and I have been at this for almost a decade. The Rules Committee held a hearing on our proposal in the summer of 2003. We worked with Chairman LOTT and with the ranking minority member, Senator DODD, extensively. This is a matter that has been considered at length by colleagues.

Senator LOTT knows firsthand about this issue because he has personally spent many hours with me as he has wrestled with it, and in fact tried to set in place some voluntary procedures that would curtail the abuses of the secret hold.

These secret holds have been an embarrassment to the Senate in my view, and they have been an embarrassment for a long time. But I cannot recall an instance where we had a hold, a secret hold on the Intelligence authorization bill at a time when our country is at war. This is a practice that needs to end.

I yield now for the distinguished chairman of the Finance Committee, Senator GRASSLEY. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, today I put a hold on the President's nominee for the Export-Import Bank. I don't usually issue a press release when I do that, but I did that because it is in relationship to a problem we are having with the Export-Import Bank on an ethanol issue, and I want the people to know that it is broader than just some of the small reasons you do holds around here.

But I have had a practice, as this amendment would mandate—I have had a practice over the last 7 or 8 years of putting a statement in the CONGRESSIONAL RECORD when I use a hold. I believe I use a hold a little less often than some of my colleagues do, but I agree. A lot of people maybe use a hold because they do not want to put up with the fuss that goes on when you make public why you are holding up a bill and who you are. But I want to assure you, I have been in the Senate for 25 years, and I have not lost one ounce of blood. I have not had one black and blue mark. I don't believe I have had any fight with any colleague over the practice when they know who I am.

Of course, if they were secret and they never knew I was doing it, I wouldn't have to worry about any of these things. But I believe, as my colleague from Oregon does, that the people's business is the people's business, and the people's business ought to be public. I believe if you have guts enough to put a special hold on legislation, you ought to have guts enough to say who you are and why you are doing it. I think your constituents ought to know that. But more importantly, just to get things done around here, your colleagues ought to know who it is because if you have a gripe, let's get the gripe out in the open and let's talk about it.

What is wrong in America that we do not want to talk about some things? I don't know how often my constituents brag about: ''There are two things I never talk about, religion and politics.'' There are no things that you ought to talk about more than religion and politics because they have more influence on your life than anything else that we do in American society. But somehow you can't think that you can do it in a civil way when you ought to be able to do it in a civil way. In the U.S. Senate you ought to be able to do all this stuff in a civil way.

I hope my experiences of not having any harm done to me in any way for putting a hold on, that people will back this amendment and get the public's business out. There is nothing wrong with the word ''hold,'' but there is something wrong with the word ''secret.'' When you read it in the newspapers you never hear the word ''hold'' unless the word ''secret'' is connected with it.

The people around the countryside of America, at least in my State of Iowa, think what is wrong with American Government is that there is too much secrecy, too much behind-the-scenes dealing, too much money in politics—all those things that give us kind of a black eye with the public. This is not going to solve these problems, just taking the word ''secret'' out of the hold.

But at least the newspapers won't be able to use the word ''secret'' anymore. And maybe when bit by bit we do some of these things around here we will be able to elevate public service to be the honorable profession that it ought to be.

This is a small effort on the part of my colleague and myself and now Senator INHOFE to do that.

How do you eat 10,000 marshmallows? You eat one at a time. How are you going to raise public respect for the Senate? You are going to do it a little bit at a time. This may be too little for some people. But the way caucuses are being held around here on this very subject in the last hour, you know this is a big deal—and it should be a big deal.

This is the public's business. Having expressed those views, I would like to go to a statement I have that maybe will make more sense.

The time has come for the Senate as a body to rid itself of a serious blemish. And, of course, I am talking about the practice I just spoke about of placing anonymous holds on legislation or nominations.

The power of the hold is to stop a bill or a nomination in its tracks, which each Senator possesses. It was never authorized or even intended. It is just a practice. It is not in the books.

I do not object to the use of this powerful tool, so long as it is accompanied with some public accountability. However, the current lack of transparency in the process is an affront to the principle of open government, and I think it is an embarrassment to this body.

The amendment by Senator WYDEN and myself and Senator INHOFE which we proposed today would establish a standing order requiring that holds be made public. We believe it is time to have the Senate consider our proposed standing order and then decide as a body whether to end this secret process.

For my colleagues who might be apprehensive about this change in doing business, I ask you to just give it a try. I should point out that this measure is a standing order which, while binding on Senators, does not formally amend the Senate rules and can more easily be changed if it turns out to be unworkable.

I have no doubt that once instituted this reform will be found to be very sound and no reason will be found why it should not be continued for a long period of time. For years, I have made it my practice to publicly disclose in the CONGRESSIONAL RECORD any hold that I place along with a short explanation. It is quick, it is easy, and it is painless. I want to assure my colleagues of that.

Our proposed standing order would provide that a simple form be filled out, much like we do when we add cosponsors to a bill. Senators would have a full 3 session days from placing the hold to submit the form. The hold would then be published in the CONGRESSIONAL RECORD and the Senate Calendar. It is just as simple as that.

This amendment is essentially the same as S. Res. 216 in the 108th Congress, which was a collaborative effort between myself, the Senator from Iowa, Mr. WYDEN, Senator LOTT, and Senator BYRD.

In the last Congress, Chairman LOTT held a hearing in the Rules Committee on the issue that is before us. Since that time, I have worked with Senators WYDEN, LOTT, and BYRD to come up with what I think is a very well thought out proposal to require public disclosure of holds on legislation or nominations in the Senate.

It says a lot that this proposal was written with the help of such outstanding Senators as Senator LOTT and Senator BYRD. As chairman of the Rules Committee and as former majority leader, Senator LOTT brings valuable perspective and experience. It is also a great honor to be able to work on this issue with Senator BYRD, who is also a former majority leader and an expert on Senate rules and procedures.

I can think of no reason a single Senator should be able to kill a bill or a nomination in complete secrecy. Despite recent attempts by the leadership to curb abuses of holds, the secret hold remains a stain on the fabric of the Senate.

It is time for the whole Senate to consider our proposed standing order and speak as a body on this issue. If any Senator believes I am misguided in this, I welcome their discussion.

I have yet to hear a single good reason we should allow secrecy to creep into what ought to be a very public legislative process. In fact, public discussion on this matter is long overdue. If this practice that is in the shadows of legislation is to continue, let us at least say so publicly.

I can think of no better time to consider this long overdue measure than in the context of a bill titled the ''Legislative Transparency and Accountability Act.''

If we don't end this in a bill with this title, we are missing a chance that we have been waiting for for 10 years. I thank the chairman of the committee for that opportunity. That is why this measure is all about transparency and accountability.

The purpose of the underlying bill is to restore public confidence in Congress by making our actions transparent and accountable. Secret holds run contrary to both principles. They are done in complete secrecy and allow Senators to avoid public accountability for action. The underlying bill requires disclosure of earmarks in advance of conference negotiations and increased disclosure of trips and employment negotiations.

I ask my colleagues to support the Wyden-Grassley-Inhofe amendment so that we can use this one small step to restore confidence and have more public accountability.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, let me begin by commending the two sponsors of this proposal. I know that each of them has worked so hard and so long trying to end the practice of secret, indefinite holds being put on either nominees or placed on legislation. I believe this proposal is consistent with the goal of this legislation which is more accountability and more transparency. I commend both of them for their effort.

I would like to engage the sponsor of this amendment in a colloquy in order to clarify that his proposal is not intended to reach a very temporary hold that is placed on a bill in order to allow for review of that legislation.

Let me give a specific example. Occasionally, bills will be discharged from their authorizing committees. These are not necessarily on the calendar. They are discharged from the committee, and the bill will be hotlined on both of our sides to see if there is any objection.

Obviously, putting a temporary stay on the consideration of a discharged bill in order to allow a few hours for review or even a day for review is completely different from the practice of secretly killing a bill by putting an indefinite anonymous hold.

I wonder if, through the Chair, I could inquire of the sponsor if it is his intention to distinguish between those two situations. I would call one a ''consult hold'' perhaps, and one a ''killer hold.''

Mr. WYDEN. Mr. President, as usual, the distinguished Chair of the subcommittee has put her finger on an important distinction. I want to take a second to describe how the legislation addresses it. I think we are of like mind on it. Subsequently, a lot of time was spent by the distinguished chairman of the Rules Committee and Senator DODD and Senator BYRD on this matter.

What the distinguished Chair of the Homeland Security Committee is describing is essentially a consult. For example, a Senator wants to be notified about a bill that is headed for the floor. Very often that comes up, say, when a Senator is in his or her home State and frequently needs to be able to come back, and it takes a day, and they need to be able to review it.

Under the Wyden-Grassley-Inhofe amendment we make very clear it is not our intention to bar those consults. We like to use the word ''consult,'' which is a protected tool for a Senator as opposed to the question of a hold.

I think perhaps another way to clarify it is a consult is sort of like a yellow light. You put up a little bit of caution—that we need a bit of time to take a look at it. A hold is a red light when you are not supposed to go forward. We don't want people to be able to exercise those holds in secret. We think it is fine to have the kind of consult that the distinguished Chair of the Homeland Security Committee has described.

In fact, to ensure that we have this kind of procedure that the Senator seeks, we call for 3 days before an individual has to put in the CONGRESSIONAL RECORD that they have a hold on a matter.

I think we are clearly in agreement—that the consult is protected, but the secret hold and forcing the Senate to do its business in public is what is going to change.

Ms. COLLINS. Mr. President, I very much appreciate the explanation and clarification of the sponsor of the amendment. I am in complete agreement with the differences that he described. I believe his proposal would inject needed transparency and accountability into the process, not to mention that I would know who puts those holds on my bills.

I hope this proposal will be adopted. I intend to support it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support this amendment offered by the Senator from Oregon, the Senator from Iowa, and the Senator from Oklahoma. I thank them very much for doing it.

I must say, as I listened to the debate I thought back to the winter of 1988 after I was elected to the Senate.

Incidentally, a distinguished member of that cast was the honorable Senator from Mississippi, and we attended the orientation session together that winter for new Senators. I remember then Senator Wendell Ford from Kentucky came before us to give us instructions about Senate procedure.

He said: Look, I remember when I was just elected to the Senate. You are going to find a lot of things around here that don't make much sense to you, but they will over time.

Then Senator Ford stopped for a moment, and said: Take the seniority rule. The longer I am here, the more sense it makes to me.

I want to say the longer I am here, the less sense the secret hold procedure makes to me. Honestly, it has become increasingly outrageous when you think about it—that this body can be stopped by an action that is secret, and the source of the action is not known on a measure that is on the Senate floor because it came out of a committee. It is really outrageous.

I congratulate Senators WYDEN, GRASSLEY, and INHOFE for seizing this moment of reform brought about by the reports from the Rules Committee and our own Homeland Security and Governmental Affairs Committee to take this opportunity to get rid of this outdated but really outrageous part of Senate procedure.

If somebody cares enough to hold up a measure and hold up the rest of us from considering it on the floor, the least they can do is have the guts to reveal their identity.

That is all this change would bring about.

I thank my colleagues. I look forward to supporting this amendment.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I defer to the manager of the bill.

Mr. LOTT. Mr. President, is the Senator from Louisiana speaking on the same issue? If you would defer, Senator INHOFE has become one of the lead cosponsors of this amendment. I think you would probably like to be heard in sequence. Then the floor would be open for questions.

Mr. WYDEN. Mr. President, at this point, after the Senator from Oklahoma has spoken, it would be my intention to very briefly wrap up the case for the Wyden-Grassley-Inhofe amendment. We would yield our time at that point, and we are going to ask for a recorded vote.

The PRESIDING OFFICER. The Senate is not currently operating under a time agreement.

Without objection, the Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, first, I was fascinated by the comment from the Senator from Connecticut that after a few years some of this stuff will make sense to us. I have only been here 20 years. I am a patient man; I will wait.

Let me put this in perspective, as far as my interest in this. Back in 1986 I was elected to the House of Representatives. There was a procedure that was used at that time called the discharge procedure whereby a person could discharge a bill out of the committee without having committee action, but it could be blocked by someone and we could not know the name of the person who blocked it.

Consequently, we found ourselves in this situation where there would be legislation that everyone at home is very excited about. We could go home and campaign and say, yes, I am for this. I remember several of the West Texas Democrats wanting to oppose gun control. Yet their caucus wanted them to support gun control. So they would tell the people at home that they were opposing it. Yet they were the very ones who kept it from coming up for a vote.

That is exactly the same thing we are dealing with here. In 1994 we were able to pass that reform. When we came over here in 1994, I was not even aware that you could put a hold on a bill without disclosing who you were or who was putting the hold on. This is a very similar thing. It is transparency, bringing it out in the open.

I agree with my good friend Senator WYDEN that if Members want to, they can put a hold on a bill. This does not affect that. Members just have to say who they are.

This morning I had my amendment on the floor and Senator WYDEN and Senator GRASSLEY showed me their amendment was essentially the same. I was very happy to fold mine in. I am happy to be part of this.

After a number of years now, this will become a reality. I applaud my fellow cosponsors for the fine work they have done.

Let me review how that means of obfuscation worked—this from the CONGRESSIONAL RECORD, page H1131, March 10, 1992:

A good example is the method Members from the House of Representatives used to hide their votes from the people concerning a balanced budget amendment to our Constitution. Shortly after it was discovered in a USA Today poll in 1987 that over 80 percent of the people in America want a balanced-budget amendment to the Constitution, House Joint Resolution 268 was introduced. House Joint Resolution 268 immediately gained 246 coauthors from over the Nation. I can just envision, at the town hall meetings back home, a liberal Democrat standing up and holding House Joint Resolution 268 in his hand saying, ''See here, ladies and gentlemen. This is my name as cosponsor of House Joint Resolution 268.'' What the Congressman didn't tell these people is that he has no intentions of allowing House Joint Resolution 268 to come up for a vote. How does this Congressman, who is trying to make the people back home believe that he is supporting a budget-balancing amendment to the Constitution, keep from having to vote on it?

It is very simple, the Speaker merely puts it in a committee and then makes a deal with the committee chairman not to bring it up for consideration. The only way that it can be brought up for consideration is for a discharge petition to be signed by 218 Members of Congress. The discharge petition is in the Speaker's desk and must be signed during the course of a legislative day. However, the names of those individuals who sign a discharge petition are kept secret and if a Member discloses the names of other Members who sign the discharge petition, he can be disciplined to the extent of expulsion from membership of the House of Representatives. So House Joint Resolution 268 had 240 cosponsors, but only 140 Members were willing to sign the discharge petition.

Pretty cozy, huh? The Congressman can falsely represent his position to the people at home and never have to vote on the issue. I might add that there is a happy ending to that House Joint Resolution 268 story. Several of us contacted a national publication. While the publication knew we couldn't divulge the names of those who signed the discharge petition, they agreed to print the names of the individuals who coauthored House Joint Resolution 268, but did not sign the discharge petition. We found a loophole in the corrupt institutional system that protects Congressmen from their electorate and as a result of that, we were able to immediately force it out onto the floor and we missed passing a balanced-budget amendment to the Constitution by only seven votes.

That situation disturbed me so much that in March of 1993 I filed a one-sentence bill on the House floor challenging the secrecy, ''Once a motion to discharge has been filed the Clerk shall make the signatures a matter of public record.''

I had 87 cosponsors, and it passed by a vote of 384 to 40.

In an article about my initiative, Reader's Digest in November of 1994 wrote, ''The success of this legislation is proof that when Congress is required to do the people's business in the open, the people—rather than special interests—win . . . the passage of this one bill is an important first step in the right direction. And it took a little-known Representative form Oklahoma to point the way.''

I ask unanimous consent to have printed in the RECORD the full text of this article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Reader's Digest, Nov. 1994]

A STORY OF DEMOCRACY AND CAPITOL HILL: HOW THE TRIAL LAWYERS FINALLY MET DEFEAT

(By Daniel R. Levine)

When a twin-engine Cessna airplane crashed near Fallon, Nev., four years ago, the National Transportation Safety Board (NTSB) ruled pilot error was the cause. But that didn't stop lawyers for two of the injured passengers from suing Cessna on the grounds that the seats on the 25-year old plan did not provide adequate support. The seats had been ripped out without Cessna's knowledge and rearranged to face each other. But the lawyers claimed that Cessna should have warned against removing the seats. A jury awarded the two plaintiffs more than $2 million.

In Compton, Calf., a single-engine airplane nearly stalled on the runway and sputtered loudly during take-off. Less than a minute into the air it crashed, killing two of the three people on board. On July 18, 1989, two days before the one-year statue of limitations would expire, the survivor and relatives of the deceased passengers filed a $2.5 million lawsuit naming the plane's manufacturer, Piper Aircraft Corp., as a defendant. Not mentioned in the suit was the fact that the plane, built in 1956, had been sitting at the airport unused and uninspected for 2½ years. The case, awaiting trial, has already cost Piper $50,000.

The NTSB found that 203 crashes of Beech aircraft between 1989 and 1992 were caused by weather, faulty maintenance, pilot error or air-control mishaps. But trial lawyers blamed the manufacturer and sued each time. Beech was forced to spend an average of $530,000 defending itself in each case and up to $200,000 simply preparing for those that were dismissed.

Such product-liability lawsuits have forced small-plane makers such as Cessna to carry $25 million a year in liability insurance. In fact, Cessna stopped producing piston-powered planes primarily because of high cost of defending liability lawsuits. Thus, an American industry that 15 years ago ruled the world's skies has lost more than 100,000 jobs and has seen the number of small planes it manufactured plummet from over 17,000 in 1978 to under 600 last year.

That may all change. Bucking years of intense lobbying by trial lawyers, Congress voted last summer to bar lawsuits against small-plane manufacturers after a plane and its parts have been in service 18 years. The legislation will create an estimated 25,000 aviation jobs within five years as manufacturers retool and increase production.

This was the first time that Congress has reformed a product-liability law against the wishes of the lawyers who make millions from these cases. And the dramatic victory was made possible because of the efforts of a little-known Congressman from Oklahoma who challenged Capital Hill's establishment.

On his first day in 1987 as a member of the U.S. House of Representatives, Jim Inhofe (R., Okla.) asked colleague Mike Synar (D., Okla.) how he had compiled such a liberal voting record while winning re-election in a conservative district. Overhearing the question, another longtime Democratic Congressman interjected: ''It's easy. Vote liberal, press-release conservative.''

This was a revealing lesson in Congressional ethics, the first of many that would open Inhofe's eyes to the way Congress really ran. He soon realized that an archaic set of rules enabled members to deceive constituents and avoid accountability.

When a Congressman introduced a bill, the Speaker of the House refers it to the appropriate committee. Once there, however, the bill is at the mercy of the committee chairman, who represents the views of the Congressional leadership. If he supports the legislation, he can speed it through hearings to the House floor for a vote. Or he can simply ''bury'' it beneath another committee business.

This arrangement is tailor-made for special-interest lobbies like the Association of Trial Lawyers of America (ATLA). For eight years, bills to limit the legal liability of small-aircraft manufacturers had been referred to the House Judiciary Committee, only to be buried. Little wonder. One of the ATLA's most reliable supporters on Capitol Hill has been Rep. Jack Brooks (D., Texas), powerful chairman of that committee and recipient of regular campaign contributions from ATLA.

The only way for Congressmen to free bills that chairmen such as Brooks wanted to kill was a procedure called the discharge petition. Under it, a Congressman could dislodge a buried bill if a House majority, 218 members, signed a petition bringing it directly to the floor for a vote. But discharge petitions virtually never succeeded because, since 1931, signatures were kept secret from the public. This allowed Congressmen to posture publicly in favor of an issue, then thwart passage of the bill by refusing to sign the discharge petition. At the same time, House leaders could view the petitions, enabling them to pressure signers to remove their names. Of 493 discharge petitions ever filed, only 45 got the numbers of signatures required for a House vote. And only two of those bills became law.

Inhofe saw the proposals overwhelmingly favored by the American people—the 1990 balanced-budget amendment, school prayer, Congressional term limits, the line-item veto—were bottled up in committee by the House leadership. When discharge petitions to free some of the bills were initiated, they were locked in a drawer in the Clerk's desk on the House floor. The official rules warned that disclosing names ''is strictly prohibited under the precedents of the House.''

In March 1993, Inhofe filed a one-sentence bill on the House floor challenging the secrecy: ''Once a motion to discharge has been filed the Clerk shall make the signatures a matter of public record.''

The bill was assigned to the Rules Committee, where it was buried. Three months later, on May 27, Inhofe started a discharge petition to bring the bill to a floor vote. Among those signing was Tim Penny (D., Minn.), a lawmaker who after ten years in the House had grown so disgusted that he had decided not to run for re-election. ''Discharge petitions procedures are symbolic of the manipulative and secretive way decisions are made here,'' said Penny. ''It's just one more example of how House leaders rig the rules to make sure they aren't challenged on the floor.''

Inhofe, though, was badly outnumbered. The Democrats82–seat majority controlled the flow of legislation. But he was not cowed. From his first years in politics Inhofe had shown an independent streak—and it had paid off. After initially losing elections for governor and Congress, He was elected to three consecutive terms as mayor of Tulsa, beginning in 1977. In 1986, he ran again for the Congress and won. Four years later, he bucked his own President, George Bush, by voting against a 1991 budget ''compromise'' that included a $156-billion tax hike.

By August 4, two months after filing his discharge petition, Inhofe had 200 signatures, just 18 shy of the 218 need to force his bill to the floor, but the House leadership was using all its muscle to thwart him. On the House floor, Inhofe announced: ''I am disclosing to The Wall Street Journal the names of all members who have not signed the discharge petition. People deserve to know what is going on in this place.''

It was a risk. House leaders could make him pay for this deed. But by making public the names of non-signers, he would avoid a direct violation of House rules. Inhofe collected the names by asking every member who signed the petition to memorize as many other signatures as possible.

The next day, The Wall Street Journal ran the first of six editorials on the subject. Titled ''Congress's Secret Drawer,'' it accused Congressional leaders of using discharge-petition secrecy to ''protect each other and keep constituents in the dark.''

On the morning of August 6, Inhofe was within a handful of the 218 signatures. As the day wore on, more members came forward to sign. With two hours to go before the August recess, the magic number of 218 was within his grasp.

What happened next stunned Inhofe. Two of the most powerful members of Congress—Energy and Commerce Committee Chairman John Dingell (D., Mich.) and Rules Committee Chairman Joseph Moakley (D., Mass.)—moved next to him at the discharge petition desk. In a display one witness described as political ''trench warfare,'' the two began ''convincing'' members to remove their names from the petition.

Standing near the desk was Rep. James Moran (D., Va.). Moakley warned him that if Inhofe succeeded, members would be forced to vote on controversial bills. ''Jim,'' he said sternly, ''I don't have to tell you how dangerous that would be.'' When the dust settled, Moran and five colleagues—Robert Borski (D., Pa.), Bill Brewster (D., Okla.), Bob Clement (D., Tenn.), Glenn English (D., Okla.) and Tony Hall (D., Ohio)—had erased their names.

Still refusing to quit, Inhofe faxed the first Wall Street Journal editorial to hundreds of radio stations. Before long, he found himself on call-in programs virtually every day of the week.

When The Wall Street Journal printed the names of the nonsigners on August 17, House members home for the summer recess could not avoid the public outcry Inhofe had generated. With scandals in the House bank, post office and restaurant still fresh in their minds, voters were demanding openness.

Feeling outgunned, Moakley allowed his Democratic colleagues to sign the discharge petition. When Rep. Marjorie Margolies-Mezvinsky (D., Pa.) affixed her name to the petition on September 8, she became the 218th Signatory.

Inhofe's bill won overwhelming approval on the final vote, 384–40. Even though most Democrats had not supported him, 209 now voted with Inhofe. Groused Dingell: ''I think the whole thing stinks.''

The first real test of Inhofe's change came last May when Representatives Dan Glickman (D., Kan.) and James Hansen (R., Utah) filed a discharge petition to free their bill limiting small-plane manufacturer liability. Even though it was co-sponsored by 305 members, the bill had been bottled up in the Judiciary Committee for nine months. But because members' signatures would now be public, voters would finally know who truly stood for product-liability reform and who did not.

Meanwhile, the Association of Trial Lawyers of America was pulling out all the stops to kill the bill. Members personally lobbied Congressmen and orchestrated a ''grassroots'' letter-writing campaign in which prominent trial attorneys urged their Representatives not to support the bill. ATLA even fired off a maximum-allowable contribution of $5,000 to Representative Hansen's opponent in the November election.

The pressure didn't work. Within two weeks 185 members had signed, and House leaders realized it would be impossible to stop the petition. Their only how was to offer a compromise version. In mid-June, Brooks reported out of committee a bill that differed only slightly from the original. On August 2, the Senate approved similar legislation. The next day the bill cleared the House without dissent. On August 17, President Clinton signed it into law.

Glickman, whose Wichita district is home to Cessna and Beech aircraft companies, said the procedural change spearheaded by Inhofe was crucial to victory. ''A lot of forces did not want this bill to go forward,'' he continued, ''and it would not have succeeded without the discharge petition.''

The success of this legislation is proof that when Congress is required to do the people's business in the open, the people—rather than special interests—win. The high cost of product-liability lawsuits, to manufacturers as well as consumer, will require far more sweeping reform of the tort system. But the passage of this one bill is an important first step in the right direction. And it took a little-known Representative from Oklahoma to point the way.

Mr. INHOFE. The situation is exactly the same here, Mr. President.

In fact, the very stated reason for this whole bill is to require Congress to do the people's business in the open.

A Senator may have a hold on a nomination or a bill or a unanimous consent agreement, and that hold is secret.

It is just as possible for a Senator to keep his constituents and Americans in general in the dark now about their holds as it was for House Members before I successfully led the charge for transparency in discharge petitions.

Indeed the Wall Street Journal was strongly in favor of my House efforts at that time.

Toward that end, I ask unanimous consent to have printed in the RECORD the Wall Street Journal's six editorials on the issue of discharge motions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 30, 1993]

REAL HOUSE REFORM

On his first day in office in 1987, Rep. Jim Inhofe asked a fellow Oklahoma Member how he could be so liberal and keep getting elected in a conservative state. A third Congressman interrupted: ''It's easy. Vote liberal. Press release conservative.''

Rep. Inhofe took a big step toward ending such hypocrisy Tuesday, when Congress voted 384 to 40 for his proposal to end the secrecy of discharge petitions. Constituents will now know who's signed up for the procedures necessary to discharge a bill from committee and force a vote; Members will no longer be able to posture one way and act another on bills popular with the public but unpopular with fellow legislators. Rep. Inhofe's overwhelming majority, after the difficulty he had signing up 218 Members to discharge his own proposal, is itself testimony to the difference between smoke-filled rooms and the light of day.

At least the 40 opponents, whose names appear below, were willing to stand up and be counted in favor of secrecy. ''I think the whole thing stinks,'' declared Rep. John Dingell, much-feared chairman of the House Energy and Commerce Committee. General Dingell warned that reform ''means you lay the basis for the entire bypassing of the committee system.'' House Rules Committee Chairman Joe Moakley railed against an ''aroused and enraged'' public that is ''virtually impossible to engage in reasonable and thoughtful debate.''

Watching Jim Wright's departure, the Keating Five scandals, the House Bank and Post Office, much of the public doubts that such debate is what goes on in Capitol corridors. Indeed, it thinks it has some right to be aroused and enraged. And when Congress routinely exempts itself from rules it imposes on the rest of society, much of the public thinks that something needs to be bypassed. So it's entirely appropriate that this major reform of House rules be forced on Congress by popular outcry.

The ideological bent of this outcry is also noteworthy. As the 40 holdouts show, the drive to make Members accountable was certainly not led by the liberals who have long thought themselves the font of ''reform.'' We on this page were glad to have played our part, and are equally glad to credit Rush Limbaugh's broadcasts and the efforts of Ross Perot, whose supporters held all-night vigils in front of Congressional offices.

We would also note, though, the lack of interest from a press that holds itself devoted to ''the public's right to know.'' For a month after Rep. Inhofe's August 4 announcement that he would publicize the names of Members who refused to end secret discharge petitions, no network or other major newspaper mentioned his crusade. Only after public agitation forced a House majority to back Mr. Inhofe did our colleagues at the New York Times and the Washington Post address the issue. The Post noted that ''in a democracy, where elected officials have an obligation to be candid and accountable, there is no reasonable argument against this change.'' We're grateful for the support, but wonder if they'd have joined the battle before it was won had it been led by, say, Ralph Nader.

It's also intriguing that secrecy was supported by Beltway ''academics.'' Thomas Mann and Norman Ornstein complained we had created ''a wildly inaccurate portrayal of Congress as a closed, secretive institution dominated by committees and party barons and unresponsive to popular sentiment.'' We refer them to the respected Members now departing in disgust. Rep. Tim Penny, the retiring Minnesota Democrat, says it took him ''only six months in Congress to realize this place doesn't operate on the level.'' In particular, he says, many Democrats are themselves upset that House leaders ''rig the rules to make sure they aren't challenged on the floor.''

To the Members, the academics and the press we say this: Welcome to the age of instant communications. We doubt that the discharge petition reform will be the last reform. In particular, some 75% of the American people support limitations on Congressional terms. Last week, after it became clear that discharge petitions would be made public, five Members signed the petition to discharge term limit legislation. While defenders of Congressional secrecy predict untoward and chaotic results, we trust the public a lot more than we trust the Members.

In 1867, the British Parliament passed the Second Reform Act, sponsored not so incidentally by Disraeli's conservatives. It gave the vote to the likes of rent-payers, and upon passage the Viscount Sherbrooke advised fellow parliamentarians to ''prevail on our future masters to learn their letters.'' In the popularized version this became, ''We must educate our masters.'' If the John Dingells and Joe Moakleys are really worried not about their own prerogatives but the future of the republic, they would be well-advised to adopt the constructive attitude affirmed by Viscount Sherbrooke.

The 40 House Members who on Sept. 28 voted in favor of secrecy on discharge petitions:

Neil Abercrombie (D., Hawaii) Sanford Bishop (D., Ga.) Jack Brooks (D., Texas) Corrine Brown (D., Fla.) Bill Clay (D., Mo.) Eva Clayton (D., N.C.) B.R. Collins (D., Mich.) Cardiss Collins (D., Ill.) Buddy Darden (D., Ga.) John Dingell (D., Mich.) Don Edwards (D., Ca.) Vic Fazio (D., Ca.) Floyd Flake (D., N.Y.) William Ford (D., Mich.) Henry Gonzalez (D., Texas) Earl Hillard (D., Ala.) Ron Kink (D., Pa.) John Lewis (D., Ga.) Ron Mazzoli (D., Ky.) Cynthia McKinney (D., Ga.) Carrie Meek (D., Fla.) Joe Moakley (D., Mass.) Alan Mollohan (D., W. Va.) John Murtha (D., Pa.) Donald Payne (D., N.J.) Nancy Pelosi (D., Ca.) J.J. Pickle (D., Texas) Charles Rangel (D., N.Y.) Lucille Roybal-Allard (D., Ca.) Bobby Rush (D., Ill.) Martin Olav Sabo (D., Minn.) Neal Smith (D., Iowa) Pete Stark (D., Ca.) Esteban Torres (D., Ca.) Jolene Unsoeld (D., Wash.) Nydia Velazquez (D., N.Y.) Peter Visclosky (D., Ind.) Craig Washington (D., Texas) Mel Watt (D., N.C.) Sidney Yates (D., Ill.)

[From the Wall Street Journal, Sept. 20, 1993]

HANDS OFF INHOFE!

When Rep. Jim Inhofe mobilized public opinion and forced House leaders to allow a September 27 floor vote on his bill to end secret discharge petitions, he knew they might try to undermine him. Sure enough, there are signs that the leadership hopes to placate the public by accepting Mr. Inhofe's secrecy bill but then sneak through House-Rule changes that would gut his reform. Should they try this stunt, Members better be ready to take some real heat from voters.

Only hours after Mr. Inhofe's first-round victory on September 8, House Rules Committee Chairman Joe Moakley said he planned an ''alternative'' to Mr. Inhofe's bill. No doubt it would pay lip service to reform while it retains the system that lets Congressional barons make certain that popular bills never see the light of day.

House leaders may try to require that two-thirds of the Members sign any discharge petition to bring a bill to the floor, rather than a simple majority. Since less than 10% of discharge petitions now reach the House floor, such a ''reform'' would kill any chance of freeing popular bills bottled up in committee. Exhibit A: Even though 75% of voters and more than 100 Members favor term limits, Speaker Tom Foley hasn't even allowed a committee hearing on the issue.

The Rules Committee met last week to discuss altering the Inhofe reform. It was suggested that successful discharge petitions merely require a committee to hold hearings on a bill. A floor vote would be mandated only if a committee refused to take any action. But, according to the newspaper Roll Call, House leaders rejected even that move. They fear they'll lose iron control of the legislative process if a majority of Members have a realistic way of bringing bills to the floor.

The hearings then became a platform for Members to vent their frustration with Mr. Inhofe's success at exposing the gag rule that kept names on a discharge petition secret. Rep. James Oberstar of Minnesota came to denounce Mr. Inhofe, but ended up scoring points for him. He called Mr. Inhofe's sunshine law a ''gimmick.'' However, he conceded that if Democrats ''were in the minority, we'd probably be doing the same.'' He also admitted that many Members introduce bills only to get ''special interests off their backs.''

Mr. Inhofe says Mr. Oberstar's admission proves that secret discharge petitions allow Members to say one thing at home and then do something else in Washington. ''Standing up to special interests is part of the job,'' he says. ''If you can't, step aside and let someone who can serve.''

Rep. Inhofe says his battle to end secrecy has also demonstrated the stranglehold that committee chairmen now exercise over legislation. Before the August recess, Mr. Inhofe's antisecrecy petition was only one signature short of the needed majority. Then Chairman Moakley ''convinced'' six Members to remove their names, forcing Rep. Inhofe to take his case to the American people.

Virginia Democrat James Moran candidly explained why he dropped off: ''When the chairman of the Rules Committee asks me to do something and it's not in conflict with my conscience, I think my ability to serve my district is enhanced when I say yes.'' Mr. Moran then noted how powerful Chairman Moakley is.

Thomas Mann, a Congressional scholar at the Brookings Institution, opposes the Inhofe reform, but he advised the Rules Committee not to amend it. ''That will only inflame the public further,'' he told us. He noted that if problems develop, the majority party will then have a good reason to push for modifications. In short, the House should have cleaned up its act years ago. Now the voters are going to do it for them.

[From the Wall Street Journal, Aug. 25, 1993]

ASIDES: DISCHARGE RUMBLES

Some House Members have complained that we listed their names among the 223 Members who haven't joined Rep. Jim Inhofe's effort to end secret discharge petitions. Speaking for the non-signers in today's letters column, Rules Committee

Chairman Joe Moakley claims that ending secrecy would mean more power for lobbyists and special interests (see related letter: ''Letters to the Editor: Why Make It Easier For Special Interests?''—WSJ Aug. 25, 1993). We'd have thought that taking a stand against such forces came with the job. We suspect that Mr. Moakley is fundamentally worried that his Rules panel would lose its hammerlock on bills. Some Members aren't listening to him. Democrats David Mann of Ohio and Barney Frank of Massachusetts have told constituents recently that they favor ending the secrecy rule. Rep. Frank says the issue is simply about whether House Members support open government. Three more Members will give Rep. Inhofe the majority that he needs to let some sunshine into Congress.

[From the Wall Street Journal, Aug. 19, 1993]

ASIDES: DISCHARGE CHARGE

Rep. Jim Inhofe's effort to end secret discharge petitions, which allow Members to publicly claim support for a bill while privately working for its defeat, is attracting some big-name boosters. Rush Limbaugh alerted his listeners to our publication this week of the list of 223 Members who refused to join Mr. Inhofe's effort. The 50 state directors of Ross Perot's organization have been asked to make discharge petition reform ''a high priority.'' Mr. Perot himself will discuss the subject on C–SPAN tonight at 8 p.m., EDT. Outraged voters are already making an impact. Rep. Karen Thurman, a first-term Florida Democrat, faxed Mr. Inhofe yesterday to say she will now sign up. By the way, through a production error Rep. Dave McCurdy of Oklahoma was omitted from the list we published. His office confirms he is not supporting Rep. Inhofe.

[From the Wall Street Journal, Aug. 9, 1993]

ASIDES: HOUSE ENFORCERS

House leaders could scarcely miss the danger Rep. Jim Inhofe posed to them with his effort to end secret discharge petitions, described in our editorial last week. Why, making public the now-secret list of members calling for floor votes on bills held by the Rules Committee would let constituents check up on members. Leaders couldn't bottle up popular bills.

On Friday, Rep. Inhofe had 208 of the 218 signatures needed on a discharge petition for his own proposal to end this hypocrisy. Then C–SPAN viewers saw House Committee Chairmen Joe Moakley and John Dingell park themselves near the desk where the petition is kept, where they ''persuaded'' several Members to remove their names. We still plan to publish the names of those Members who favor secrecy over open government, and maybe constituents can do a little persuading of their own.

[From the Wall Street Journal, Aug. 5, 1993]

CONGRESS'S SECRET DRAWER

The ongoing drama in the Capitol makes it clearer than ever that Congress can't control either itself or its budget. A large part of the problem is procedure, an arcane set of rules evolved over the years to let Congresspersons protect each other and keep constituents in the dark. Rep. Jim Inhofe has launched a campaign against the keystone of these rules, the veil of secrecy covering a device called the discharge petition.

It works like this: The House conspires to bottle up in committee all the bills that are popular in the country but unpopular on Capitol Hill—balancing the budget or limiting terms, for example. The Rules Committee is particularly crucial, as it was in shelving civil rights bills in the 1950s. The Rules Committee simply sits on a bill, allowing members to posture in public in support while never having to vote on it, much less enact it.

The discharge petition is supposed to serve as a protection; a bill can be forced onto the floor if a majority of Members sign a petition. But that rarely succeeds, because until the required number of 218 is reached, the list of signers is kept strictly secret. So Members can still posture in public and effectively vote the other way in secret, even co-sponsoring a bill but refusing to sign its discharge petition. Worse, only House leaders know who has signed, and when a petition nears 218 they can pressure the most pliable members to drop off.

Discharge petition procedures have the flavor of a covert brotherhood rather than a representative body. Petitions are kept locked in a drawer at the clerk's desk. The drawer can only be opened during a House session and only a signing Member can see a petition. Members cannot take any notes, and can't even bring their own pens to the desk. They must read a statement signed by the Speaker noting that disclosing any names on the petition is ''strictly prohibited under the precedents of the House,'' a prohibition imposed in 1931 by Speaker John Nance Garner, but never made part of House Rules. Violators face disciplinary action, up to and including expulsion.

Rep. Inhofe was granted floor time last night to dare House leaders to carry out this threat. Mr. Inhofe filed a bill to require that signatures on a discharge petition be made public, and it was promptly assigned to the Rules Committee for burial. So he started a discharge petition to bring it to the floor, and quietly asked each signer to memorize other names on the list; by now he's painstakingly assembled a list of 200 signers, only 18 short of a majority. He revealed last night that he will disclose the names of all Members who have not signed the petition, and is ready to face any disciplinary action against him.

As a public service, we've agreed to print his list as Congress leaves Washington to visit its home constituencies. Watch this space to learn if your Congressperson wants secrecy or openness in government. Of course, Members not on Mr. Inhofe's petition can sign up for openness before leaving town. As he advised his colleagues last night: ''It's just one short trip to the secret drawer to sign discharge petition No. 2. Take a friend.''

After all was said and done, the Wall Street Journal noted, ''Members will no longer be able to posture one way and act another on bills popular with the public but unpopular with fellow legislators . . . While defenders of Congressional secrecy predict untoward and chaotic results, we trust the public a lot more than we trust the Members.''

Mr. President, that is again exactly what I am talking about here in this parallel instance.

I want to very strongly note that the Wall Street Journal is in favor of eliminating the secrecy of Senate holds at this time.

Toward that end, I ask unanimous consent to have printed in the RECORD this Wall Street Journal editorial that endorses the concept of eliminating secret holds, assuming no one puts an anonymous hold on this unanimous consent request:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 29, 2005]

ADVISE AND CONSIGN—THE FILIBUSTER ISN'T THE ONLY PROCEDURE SENATORS ARE ABUSING

With a showdown looming over the filibuster of judicial nominees, now is the time to point out another abuse of the Senate's ''advise and consent'' power. It's called the ''hold,'' whereby an individual Senator can delay indefinitely a Presidential nomination, and it is seriously interfering with the operation of the executive branch.

Call it every Senator's personal ''nuclear option.'' If he doesn't like a nominee or, more likely, doesn't like a policy of the agency to which the nominee is headed, all he has to do is inform his party leader that he is placing a hold on the nomination. Oh—and he can do so secretly, without releasing his name or a reason.

Like the filibuster, the hold appears nowhere in the Constitution but has evolved as Senators accrete more power to themselves. Senate rules say nothing about holds, which started out as a courtesy for Members who couldn't be present at votes. Oregon Democrat Ron Wyden has said holds are ''a lot like the seventh-inning stretch in baseball. There is no official rule or regulation that talks about it, but it has been observed for so long that it has become a tradition.''

Also like the filibuster—which was never intended to block judicial nominees from getting a floor vote—the hold is being abused by a willful minority of Senators. This being a Republican Administration, Democrats in particular are using it now to hamstring or stop its ability to govern. There's no formal list of holds, but the current batch may well be unprecedented both in number and degree. Here's our unofficial list:

Rob Portman, U.S. Trade Representative. The Senate Finance Committee unanimously backed the former Congressman this week. But don't expect a floor vote soon. Indiana Democrat Evan Bayh has placed a hold on his nomination in hopes of forcing a vote on a protectionist bill he favors on trade with China. (Think AFL–CIO and the 2008 Presidential nomination.) Meanwhile, it looks like Mr. Portman will miss a high-level meeting next week in Paris to jump-start trade talks.

Stephen Johnson, head of the Environmental Protection Agency. Senator Tom Carper says Mr. Johnson ''is qualified to head the EPA and would serve the agency well.'' Yet the Delaware Democrat placed a hold on him over a dispute regarding the Administration's Clear Skies program, regulating pollutants in the air. Mr. Johnson dodged an earlier bullet when California Democrat Barbara Boxer threatened a hold unless the EPA canceled a study of infants' exposure to home pesticides. Mr. Johnson, who is acting EPA head, canceled the program.

Lester Crawford, Food and Drug Administration Commissioner. The sticking point here is Plan B, aka the morning-after pill. Democrats Hillary Clinton and Patty Murray want Plan B sold over the counter and say that the agency is stalling. They say they won't lift their hold until the FDA makes a decision.

Tim Adams, Undersecretary of the Treasury for International Affairs. The person in this position is responsible for, among other critical issues, the Chinese yuan and the World Bank. But Democrat Max Baucus has higher priorities—namely, trade with Cuba. He objects to a legal ruling by an obscure arm of the Treasury that requires advance payment by Havana for purchases of U.S. agricultural products such as grain from the Senator's home state of Montana. There are six more Treasury positions open—including those responsible for tax policy, Fannie Mae

and terrorist financing. Mr. Baucus promises holds on all of them. The Senator realizes he can't win a vote in Congress on his Cuba problem, so he's resorting to this nomination extortion.

Defense Department. Where to begin? With a war on, you'd think Senators would want to keep the Pentagon fully staffed. But John McCain, angry over the Air Force's tanker-leasing deal with Boeing, last year put holds on numerous Defense nominees, including two candidates for Army Secretary, the comptroller and the assistant secretary for public affairs, the long-serving Larry DiRita. Now that Mr. McCain's personal punching bag, Air Force Secretary Jim Roche, has left the Pentagon, the Arizona Republican has calmed down—though not enough to lift his hold on Michael Wynne as Undersecretary for Acquisition. President Bush gave Mr. Wynne a recess appointment last month.

Meanwhile, Democrat Carl Levin has a hold on Peter Flory, who was nominated almost a year ago as Assistant Secretary for International Security Policy. Mr. Flory has the misfortune to work for Undersecretary Douglas Feith, whom Senator Levin has pursued like Ahab chasing Moby Dick. So Mr. Flory gets harpooned, too.

Until Wednesday, John Paul Woodly was blocked as Assistant Secretary of the Army for Civil Works by Alabama's two Republican Senators. Jeff Sessions and Richard Shelby said Washington favored Georgia in a decade-long dispute over water rights. (We're not making this up.) And in March, Mississippi Republican Trent Lott placed a hold on the chairman of the Base Closing Commission, which he feared might shut a military facility in his home state. The President again had to use recess appointments to name all nine members in April.

Once upon a time in America, such policy disputes were settled in elections or with votes in Congress. But in today's permanent political combat, Senators wage guerrilla warfare against the executive. No wonder so few talented people want to work in Washington. Senator Wyden and Republican Charles Grassley plan to re-introduce legislation next month to kill holds that are secret. Better yet would be to get rid of all Senate holds.

Mr. INHOFE. As the Wall Street Journal mentions, neither the Constitution nor the Senate Rules mention holds. We need this legislation to correct the current situation.

One of the many times I personally have run into this problem of holds was in the case of the nomination of Governor Mike Leavitt of Utah to be administrator of the Environmental Protection Agency.

As chairman of the Senate Environment and Public Works Committee I was trying to shepherd the nomination of Governor Leavitt through my committee.

At that time in 2003, Governor Leavitt was being run through unprecedented hoops by the Democrats to obstruct his nomination even though we had an affirmative statement from my Ranking Member Senator JEFFORDS that he considered Governor Leavitt a friend and admission that he was going to receive the vote of Senator JEFFORDS.

Pursuant to this situation, Roll Call wrote the following piece that I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Roll Call, Oct. 6, 2003]

INHOFE CONSIDERS RULES AMENDMENT

(By Mark Preston)

Environment and Public Works Chairman James Inhofe (R-Okla.) is considering asking his Senate colleagues to amend chamber rules to terminate the minority party's ability to block committees from reporting out legislation and nominations.

Such a measure would impose uniform guidelines on how the Senate's 19 standing committees and lone special panel operate.

''I am going to have to look to see what can be done, because the Democrats could effectively shut down the government altogether,'' Inhofe said.

The EPW chairman's contemplation of a new rule was sparked by committee Democrats' successful effort last week to delay a vote on Utah Gov. Mike Leavitt's (R) nomination to head the Environmental Protection Agency. Democrats charge that Leavitt has failed so far to adequately answer their written questions posed to him, and therefore boycotted the hearing.

Inhofe is likely to face stiff opposition if he pursues a change in the rules, which would require 67 votes on the Senate floor.

''I am not in favor of changing the rules much,'' said Sen. Robert Byrd (D-W.Va.), a staunch defender of Senate tradition. ''The rules have been here for a long time and they are the product of decades of experience.''

Currently, each committee adopts its own rules of procedure at the outset of every Congress. EPW rules require that at least two members from the minority party be present for a nominee to be reported out of committee. Democrats took advantage of that stipulation by not attending the Leavitt hearing and thereby preventing Inhofe from holding a vote on the nomination.

''I think we may have to change the rules in the Senate in terms of how committees operate because they say you can't conduct business unless you have members of both sides'' present, Inhofe said. ''What they did [Wednesday] is far worse than stopping a guy's confirmation. It goes to the whole heart of how the committee system works.''

Even though EPW requires at least two minority party representatives to be present to take action, other committees have less stringent rules. For example, the Finance Committee requires that a quorum include at least one member from each party to be present when the full committee votes on a bill or a nomination. And the Rules and Administration Committee requires that a majority of panel members be present to vote on legislation or a nominee, but does not stipulate that a member from either the majority or minority be present when such an action is taken.

Inhofe said he is also interested in amending the rule that allows committees to only meet for two hours after the Senate gavels into session unless both parties agree—on a daily basis—to waive it. In recent years, this unanimous consent agreement has been rejected by several Senators for various reasons.

''One party can stop government completely, and I don't think that was certainly the intent of those people who made the rules to start with,'' the Oklahoma Republican said.

Inhofe's proposals for adding to and altering the current rules are just two among a handful of reforms that Republicans have been championing since taking over the majority earlier this year.

''The Senate Republican majority is going to have to look at a number of them,'' Rules Chairman Trent Lott (R-Miss.) said of potential changes. ''I do think our rules have not been seriously considered in quite some time.

''We need to take a look at the way the Senate functions,'' Lott added.

One rules change is currently waiting action by the full Senate. Lott's panel approved a measure in June that would end the use of a filibuster to stop a nomination. All 10 Republicans on the panel voted to report the bill out of committee, but it still needs the backing of 67 Senators on the Senate floor for it to be enacted. Democrats on the Rules panel did not attend the June 24 hearing and have vowed to prevent the rule change from passing on the floor.

Republicans are seeking this change to stop Democrats from blocking President Bush's judicial nominees. Already, one of Bush's picks for a seat on the appellate court has withdrawn his name because Democrats refused to allow a vote on his nomination. Currently, Democrats are blocking two other judicial nominees and have pledged to block U.S. District Judge Charles Pickering's nomination to the appeals court.

The disagreement over judges has added to the partisanship in the traditionally collegial Senate.

''I think the judge issue is poisoning the well around here and it is unfortunate,'' said Sen. Judd Gregg (R–NH). ''It has never happened before this filibuster on the judges at this level, and that has created frustration.''

But Democrats contend Bush is to blame for the judicial filibusters, because he refuses to work with Democrats to pick candidates acceptable to both political parties.

''I would like to point out, when people are opposed to some of these nominees, don't look at the Senators, ask the guy who sent the nominees,'' said Judiciary ranking member Patrick Leahy (D–VT). ''That is part of the problem. The White House doesn't make an effort to really work with everybody.''

Another rules change advocated by several Senators is one ending the use of an anonymous ''hold.'' A hold is a tactic used by a Senator to stop a nomination or a bill the lawmaker opposes, or often to gain leverage on another issue.

It is a huge problem for the leaders,'' Lott said of the use of secret holds. And Lott, a former Majority Leader, warned that Majority Leader Bill Frist (R–TN) and Minority Leader Tom Daschle (D–SD) will experience the ''devastating'' consequences of this practice when the two leaders try to wrap up legislative business for the year.

They are fixing to find out the last week we are here they are going to say, 'The hold is a really bad creation,'" Lott said. ''I know it, but they have got to see it. That is when conferences are coming through, and that is when bills need to move.''

As for the Leavitt nomination, Inhofe has scheduled three consecutive meetings beginning Oct. 15 in which a vote on the Utah governor's nomination could occur. But it is unclear what action Democrats will take.

''He hasn't answered our questions,'' said Sen. Barbara Boxer (D–CA). ''So if we get the answers to our questions from Leavitt that is a different circumstance.''

''Let's see how he answers our questions,'' she added.

Inhofe could change his panel's rules to allow him to report Leavitt out of the committee, but he would still need two Democrats present to take a formal vote on the change.

Mr. INHOFE. You can see from rollcall's reporting that no matter what I achieved in my committee, an anonymous hold could always be placed on the President's nomination, and thus a

halt could be brought to operations of the Senate and in turn the administration.

The American people do not want obstruction; they want progress from us.

Obstruction was certainly practiced by Senator Daschle, and the people showed their lack of appreciation at the ballot box.

I ask that Members join me in this effort and do what our constituents want for the sake of transparency and honesty.

We ought to have the courage to stand up for our convictions, not hide in the shadows of darkness and anonymity.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, it is my intent at this point to wrap up.

I particularly thank the distinguished Senator from Oklahoma, who has had a longstanding interest in this subject, for working with Senator GRASSLEY and myself. We do have a bipartisan effort.

The Senator from Oklahoma has highlighted another problem with it, and a lot of Members who served in the other body bumped into this. A lot of these holds over the years have not even been placed by Senators themselves. They have been placed by staff, and Senators go up to each other and try to ask about a matter and it ends up a Senator may not even know about it.

I also see the Senator from Mississippi, the distinguished chairman of the Committee on Rules. He spent a lot of hours with me talking about this over the years. Senator LOTT, to show his commitment to the cause of openness, has tried repeatedly to get Senators to do this voluntarily. I recall on a number of instances Senator LOTT and Senator Daschle met with Senator GRASSLEY and me. We put together a variety of letters and directives to Senators. It still would not come together.

We think you have to make this a permanent change in the Senate procedures, put the burden on the objector rather than on the leadership, as we have done so often in the past, and the leaders would then have to make phone calls. Senator LOTT has a wonderful story that he has told me over the years about sitting in phone booths at airports calling Members, trying to figure out who in the world had a hold on something.

I say to colleagues, we have now reached that moment where the Senate has had it up to here with all of the secrecy and practice of doing business in the shadows.

To wrap this up, we are going to have a vote in a few minutes. The Intelligence Authorization bill, a bill that is vital to America's national security, is subject to a secret hold. I don't think anything could make the case for our bipartisan amendment more clearly than the need to move ahead with this country's vital business in intelligence. I have talked to Chairman ROBERTS about this. He wants that bill to move. It is a bipartisan bill. We have not had a situation since 1978 when we could not move forward on an intelligence bill.

I hope colleagues will finally bring the Senate into the sunshine. This enormous power that each Senator has is one that will continue, but if we can prevail on this vote, it will be one that will be exercised in the sunlight. Each Senator will be held accountable when they assert this particular power.

I urge my colleagues to vote yes on the Wyden-Grassley-Inhofe amendment.

I yield back the balance of my time and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The Senator from Mississippi.

Mr. LOTT. Let me clear up one point. I am not sure we are ready to go to a recorded vote at this moment. I thought maybe we could set it aside and go to other amendments and have stacked votes later in the afternoon, allowing Senators to continue committee meetings. However, I have been notified that maybe someone would object to a unanimous consent to set it aside so I sent a message back to that Senator: if you want to object, you better come over here. That is a problem around here. We send our surrogates over to object, but they are not here. If he comes, he can object. That is fine. We will try to work with everyone to try to accommodate everyone. There may be a need for further discussion.

Let me take a moment to commend the Senator from Oregon and the Senator from Iowa and now the Senator from Oklahoma for your tenacity. You have been pecking away at this for years.

Typical of the leadership, there was a time when I was saying, do we need to go that far; there is a misunderstanding about holds. In fact, that is a misnomer. There is no such thing. A hold is a request to be notified when an issue or a nominee will be brought up so we can come over and speak. The fact is, it ties the leadership's hands because quite often they say, wait a minute, I can't delay the business of the Senate to have this Senator come over here and talk at length—which is his or her right—on a nominee or a Member.

The point I am trying to make, I have tried to work to deal with this issue of fairness. Senator Daschle and I did work with Senator BIDEN to further clarify, what is this thing, a hold? How do I have to comply with it? We requested that it be put in writing, which, by the way, was never locked into place. That is one of the reasons I am for this.

We need to make it clearer about how Members do this and what the requirements are. We do not want to stop the practice of a Senator being able to file notice that he would like to be able to come over and discuss an issue.

What I have had a problem with, I do think it has been abused. We have anonymous hold, we have rolling hold, and it is harder and harder and harder to try to do the business of the Senate. But the anonymous part of it is the part that bothers me the most. That is the thrust of the Rules bill and particularly the bill by the Committee on Homeland Security and Governmental Affairs. Let's open things, disclose things, have transparency, make sure the people know what we are up to.

This is, in my opinion, very sinister, where Members can hold up a nomination, hold up a bill, and not even acknowledge they are doing it.

I point out that all this amendment does is to say the holds must be in writing and they have to be published in the RECORD in 3 days.

Is that the thrust of the Senator's amendment?

Mr. WYDEN. The Senator is absolutely right.

Mr. LOTT. What is the threat here? I do think there is a good cause for late at night, 6 o'clock, you are wrapping up, and all of a sudden the leadership hits us with, we want to clear 10 bills and a Senator can say, wait a minute, I want to make sure, What is the cost of this bill—as the Senator from New Hampshire has been inclined to do. He has that right. It is appropriate he be able to have time to look at that. But he ought to then have to put in writing that notice to the leader so the leader, if nothing else, will not forget it, and then acknowledge who he is. That is all this does.

I don't know what the vote of the Senate is going to be because some Members may say they are giving up some of their senatorial prerogatives. No, you are not; you just can't hide. That is all.

In the spirit of this legislation of openness and honesty, let me say, this is also an area where some Senators—no one has gotten in trouble with these holds or used the holds for a response or for some benefit personally, but the day will come, if we do not watch it, someone will get in trouble ethically with this procedure.

The leaders may have a different view and I will be very responsive to their views, but for now, it is time we quit talking about making things more open and honest and we do it. This amendment would do that. I plan to support it.

I am advised we do not have an objection to setting aside this amendment, unless others wish to speak on this amendment.

Does the Senator from New York have a comment on this issue or another issue?

The PRESIDING OFFICER. The Senator from Mississippi has the floor.

Mr. LOTT. Mr. President, I yield to the Senator from Oregon for a question.

Mr. WYDEN. Mr. President, I thank my colleague from Mississippi. I particularly thank him for his extraordinarily supportive statement and for

all the help he has given me over this decade. It probably would be my preference to have a recorded vote at this time, particularly since I have had the good fortune to have had such a supportive statement from the distinguished chairman of the Committee on Rules.

Is there a problem with having a recorded vote on the Wyden-Grassley-Inhofe amendment at this time?

Mr. LOTT. There would be a problem having the vote at this time, just out of convenience for a number of Senators on both sides who have other commitments. We would like to perhaps stack votes a little later in the afternoon. I want to collaborate with the chairman of Homeland Security and Senator DODD and Senator LIEBERMAN about exactly what time we would do that. We could get more work done without interfering with Senators' schedules.

So, yes, there would be an objection to it right now. But it has already been locked in and we will have a recorded vote. It will be first in the sequence whenever we set it up.

Mr. WYDEN. Mr. President, just to wrap this up, that is a very fair procedure that the Senator from Mississippi has outlined and we will be happy to accept that.

Mr. LOTT. I ask unanimous consent we set aside the Wyden-Grassley-Inhofe amendment and go to the next pending amendment.

The PRESIDING OFFICER. Is there an objection?

Mr. SCHUMER. Reserving the right to object, could I speak, before we set it aside, on this amendment?

Mr. LOTT. I withhold my unanimous consent request at this time, Mr. President.

The PRESIDING OFFICER. The consent request is withdrawn without objection.

The Senator from New York is recognized.

Mr. SCHUMER. I commend my colleague from Oregon and my colleague from Oklahoma for their lone battle on this issue. It is an issue we all agree with and very much appreciate their hard work.

AMENDMENT NO. 2959 TO AMENDMENT NO. 2944

Second, I will say a word on another issue that is pending in the House of Representatives. At this point, I offer an amendment at the desk as a second degree to Mr. WYDEN's amendment.

The PRESIDING OFFICER. The clerk will report.

Mr. LOTT. Mr. President, parliamentary inquiry: Does he have to have consent? He just calls it up and it would not——

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not need consent to offer a second-degree amendment.

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 2959 to the Wyden amendment numbered 2944.

The amendment is as follows:

In the interest of national security, effective immediately, notwithstanding any other provision of law and any prior action or decision by or on behalf of the President, no company, wholly owned or controlled by any foreign government that recognized the Taliban as the legitimate government of Afghanistan during the Taliban's rule between 1996–2001, may own, lease, operate, or manage real property or facilities at a United States port.

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. My understanding was that the Santorum-Feingold-McCain-Lieberman amendment was by consent, next in line, is that not the case?

The PRESIDING OFFICER. Under the previous order, that is the next first-degree amendment that would be in order.

Mr. SANTORUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MARTINEZ). Is there objection?

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion on the bill to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2349: an original bill to provide greater transparency in the legislative process.

Bill Frist, Mitch McConnell, Rick Santorum, Mel Martinez, Jim Inhofe, Susan Collins, Trent Lott, John E. Sununu, John McCain, Judd Gregg, Norm Coleman, Michael B. Enzi, Wayne Allard, R.F. Bennett, Craig Thomas, Larry E. Craig, George V. Voinovich, C.S. Bond.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOBBYING REFORM

Mr. FRIST. Mr. President, both the Democratic leader and I will have a few comments, but what I have just done is filed a cloture motion, which I have done so reluctantly because I really have been very pleased over the past couple weeks as we addressed a very important issue on lobbying reform and ethics reform, an issue that is critical to restoring the faith the American people really deserve to have in their Government. We have been working together, as I said, in a bipartisan way. I thought until a few hours ago we had a very good chance of completing this bill this week.

At the leadership level, we worked together very well, and the four managers—we have four managers because we merged the two bills—have been working together effectively and lined up a number of amendments to vote on today and tomorrow as well. As I said, I thought we would be able to finish it.

Having said that, what happened today is an amendment came to the floor under circumstances that I am not going to go through right now, but it is such that it really would take us off the course of this bipartisan lobbying reform bill. We had discussions as to whether that amendment would be withdrawn, but it was made very clear after the discussions among us that the amendment would come back later tonight, tomorrow, or the next day.

Again, this amendment has nothing to do with lobbying reform or ethics reform of this body, something that is important, something that is the business of the Senate right now on the floor.

So what I have done is filed a cloture motion which will ensure we finish this bill. We have had reasonable time for people to offer amendments, and postcloture, once cloture is obtained, germane amendments can still be considered.

Let me also add that we still have the opportunity to get the bill done. What I would suggest is that with this cloture motion, since it will ripen on Friday unless we are able to work out some other agreement to have it ripen before that, we do have the opportunity tomorrow to work over the course of the morning, really through